

Carol Sidwell

September 17, 2004

Moline, IL

1

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF MASSACHUSETTS

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4 IN RE PHARMACEUTICAL)

5 INDUSTRY AVERAGE WHOLESALE) MDL No. 1456

6 PRICE LITIGATION) Civil Action: 01-CV-12257-PBS

7 THIS DOCUMENT RELATES TO)

8 ALL CLASS ACTIONS)

9

10 Deposition of CAROL SIDWELL, taken before

11 GREG S. WEILAND, CSR, RMR, CRR, Notary Public,

12 pursuant to the Federal Rules of Civil Procedure for

13 the United States District Court pertaining to the

14 taking of depositions, at Suite 300, 1630 Fifth

15 Avenue, in the City of Moline, Illinois, commencing

16 at 10:38 o'clock a.m., on the 17th day of September,

17 2004.

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<p>2</p> <p>1 PRESENT:</p> <p>2</p> <p>3 HEINS, MILLS & OLSON, P.L.C., by</p> <p>4 MS. SUSAN E. MacMENAMIN (via telephone)</p> <p>5 3550 IDS Center</p> <p>6 80 South Eighth Street</p> <p>7 Minneapolis, Minnesota 55402</p> <p>8 (612) 338-4605</p> <p>9 E-mail: esmacmenamin@heinsmills.com</p> <p>10 On behalf of the Plaintiffs;</p> <p>11</p> <p>12 PATTERSON, BELKNAP, WEBB & TYLER, LLP, by</p> <p>13 MR. ERIK HAAS</p> <p>14 1133 Avenue of the Americas</p> <p>15 New York, New York 10036-6710</p> <p>16 (212) 336-2117</p> <p>17 E-mail: ehaas@pbwt.com</p> <p>18 On behalf of the Defendants;</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p>4</p> <p>1 INDEX</p> <p>2 September 17th, 2004</p> <p>3 CAROL SIDWELL</p> <p>4 PAGE</p> <p>5 Examination by Mr. Haas 6</p> <p>6 Examination by Ms. MacMenamin 58</p> <p>7 Further Examination by Mr. Haas 76</p> <p>8 Further Examination by Ms. MacMenamin 78</p> <p>9 Further Examination by Mr. Haas 80</p> <p>10</p> <p>11 DEPOSITION EXHIBITS</p> <p>12 NUMBER DESCRIPTION PAGE</p> <p>13 Exhibit Sidwell 002 Managed Health Care System 24</p> <p>14 Agreement, RESTAT, Bates labeled</p> <p>15 JDH 001602 through 001617</p> <p>16</p> <p>17 Exhibit Sidwell 003 Network Provider Agreement 47</p> <p>18 between John Deere Health Care,</p> <p>19 Inc., and Contracting Provider,</p> <p>20 Bates labeled JDH 003434 through</p> <p>21 003460</p> <p>22</p>
<p>3</p> <p>1 MS. LAURA J. KNOLL</p> <p>2 1300 River Drive, Suite 200</p> <p>3 Moline, Illinois 61265</p> <p>4 (309) 765-1365</p> <p>5 E-mail: KnollLauraJ@JohnDeere.com</p> <p>6 On behalf of the Witness.</p> <p>7 Also Present: Mr. Michael Baderstadt.</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p>5</p> <p>1 DEPOSITION EXHIBITS (CONTINUED)</p> <p>2</p> <p>3 NUMBER DESCRIPTION PAGE</p> <p>4</p> <p>5 Exhibit Sidwell 004 Network Provider Agreement 50</p> <p>6 between John Deere Health Plan,</p> <p>7 Inc. and Contracting Provider,</p> <p>8 Bates labeled JDH 003491 through</p> <p>9 003522</p> <p>10</p> <p>11 Exhibit Sidwell 005 Network Provider Agreement 51</p> <p>12 between John Deere Health Care,</p> <p>13 Inc. and Contracting Provider,</p> <p>14 Bates labeled JDH 003461 through</p> <p>15 3490</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>

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<p>1 MS. KNOLL: Erik, Carol has not been sworn 2 in. 3 MR. HAAS: Can you swear in Carol. 4 (Witness sworn.) 5 CAROL SIDWELL 6 after being first duly sworn, testified as follows: 7 EXAMINATION 8 BY MR. HAAS: 9 Q. Ms. Sidwell, would you please state your 10 full name for the record. 11 A. Carol Sidwell. 12 Q. And what is your current position? 13 A. Manager of provider relations. 14 Q. And as manager of provider relations, you 15 report to Michael Baderstadt, correct? 16 A. Baderstadt, yes. 17 Q. Baderstadt. I'm going to walk through 18 with you the same background that we walked through 19 with Michael, and I apologize for putting you 20 through it. 21 But if you would, could you starting with 22 post high school just quickly describe for me your</p>	<p>1 A. Correct. From there I started working at 2 a hospital pharmacy reviewing the physician orders, 3 overseeing injections, filling of the medication 4 carts, being a resource to the physician within the 5 hospital pharmacy environment. 6 Q. What is the time frame that you worked in 7 the hospital? 8 A. I would have to check for exact dates on 9 that, but I believe I started there in '82 or '83, 10 and I worked there for about a three-year time 11 frame, and I left there to then go back in retail 12 pharmacy working for a different chain as a pharmacy 13 manager in one of their retail locations. I worked 14 with that organization in various functions managing 15 pharmacies until 1993, when I became to John Deere 16 Health. 17 Q. And how have your responsibilities and 18 titles changed from 1993 to date while at John Deere 19 Health? 20 A. When I first came to John Deere Health, I 21 don't remember the exact title. I believe it was a 22 pharmaceutical care representative where I would go</p>
<p>1 employment and educational experience. 2 A. Okay. After graduating from high school, 3 I went to the University of Iowa, graduated from 4 there in 1981 with a degree in pharmacy. During 5 that time there were miscellaneous jobs including 6 restaurant and lifeguarding and non-drug-related 7 experiences. 8 Q. Me too, both of those. 9 A. After graduating in '81, I worked for a 10 retail pharmacy chain for about nine months or so as 11 a staff pharmacist filling prescriptions, billing 12 insurance claims. 13 MS. MacMENAMIN: I'm sorry, the phone 14 seems to be cutting out a little bit. I don't know 15 if the speaker is too far away from the witness. 16 MR. HAAS: I'll turn up the volume too and 17 see if that helps out at all. 18 BY MR. HAAS: 19 Q. Okay. The witness testified that she 20 worked for a retail pharmacy chain as a staff 21 pharmacist and filling prescriptions. 22 Is that correct?</p>	<p>1 out and work with physicians, talk with them about 2 their prescribing habits, their formulary 3 utilization, generic utilization, trying to use 4 first line agents. 5 I was then involved in some special 6 projects putting together a preferred drug list for 7 our TennCare product, the Tennessee Medicaid 8 product, and then went on to other special projects 9 working with what we refer to as the health center 10 or our clinic, our staff model HMOs. As we were 11 building new facilities, I was responsible for 12 designing the pharmacy, hiring the pharmacy staff, 13 getting the licensure, setting up the purchasing 14 agreements for those clinics. 15 And then I went to the provider 16 contracting area where I became responsible for 17 pharmacy contracting and pharmaceutical manufacturer 18 contracting for rebates, as well as the customer 19 service provider service aspects of pharmacy, the 20 claims processing, authorizations, implementation of 21 the drug benefit, interactions with the claims 22 processor.</p>

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<p>10</p> <p>1 Q. Okay.</p> <p>2 A. And then I added some additional</p> <p>3 responsibilities to that for provider relations,</p> <p>4 communications and working with physicians,</p> <p>5 hospitals and other providers in addition to</p> <p>6 pharmacy, and as Mike described, most recently this</p> <p>7 year I've become responsible for our national</p> <p>8 contracts for DME, home health, vision, chiro,</p> <p>9 mental health, specialty pharmacy programs and some</p> <p>10 of our other vendors.</p> <p>11 Q. Okay. Going back to the time that you</p> <p>12 were a pharmacy manager for a retail pharmacy chain,</p> <p>13 what chain was that?</p> <p>14 A. The first time out of college?</p> <p>15 Q. No, from 1983 to 1993.</p> <p>16 A. I worked for Osco Drug, part of American</p> <p>17 Stores.</p> <p>18 Q. And part of your responsibilities as a</p> <p>19 pharmacy manager, did that involve at all</p> <p>20 contracting with health plans?</p> <p>21 A. That wasn't part of my direct</p> <p>22 responsibility. The corporate office handled those</p>	<p>12</p> <p>1 understanding of the rates at which -- withdraw</p> <p>2 that.</p> <p>3 While a pharmacy manager at Osco from 1983</p> <p>4 to 1993, did you have an understanding of the prices</p> <p>5 at which Osco could acquire drugs from wholesalers?</p> <p>6 A. I knew what costs my particular store was</p> <p>7 paying for those drugs that we acquired.</p> <p>8 Q. Did you also gain an understanding at that</p> <p>9 time of what the pharmacy industry generally was</p> <p>10 paying wholesalers for drugs? And by that --</p> <p>11 A. I would say that I'm aware of an average</p> <p>12 discount that we were able to purchase drugs for</p> <p>13 depending on whether it was a brand or a generic</p> <p>14 item, and depending on your manufacturer, certainly</p> <p>15 in the range of 15 to 20, 25 percent discount on the</p> <p>16 brand items, and much greater than that on the</p> <p>17 generic items.</p> <p>18 Q. When you're talking in terms of the</p> <p>19 discount, you're talking in terms of the discount</p> <p>20 off of what?</p> <p>21 A. Discount from AWP or average wholesale</p> <p>22 price.</p>
<p>11</p> <p>1 contracts. I was involved in some of the</p> <p>2 discussions, but it wasn't a direct responsibility.</p> <p>3 Q. When you say you were involved in</p> <p>4 discussions, what did those discussions entail?</p> <p>5 A. As John Deere Health was sending out</p> <p>6 requests for participation in a preferred product at</p> <p>7 that time, I worked with some of our corporate</p> <p>8 entities to discuss various reimbursement rates and</p> <p>9 what we would want to propose.</p> <p>10 Q. And in coming up with the amount of</p> <p>11 reimbursement rates that the pharmacies wanted to</p> <p>12 propose, the pharmacy you were working for wanted to</p> <p>13 propose, did you build in an element of margin above</p> <p>14 the drug cost to the pharmacy?</p> <p>15 A. Yes.</p> <p>16 Q. Typically what was the range of margin</p> <p>17 that Osco would propose as a reimbursement rate?</p> <p>18 A. I don't feel that I would be able to</p> <p>19 represent what Osco would propose.</p> <p>20 Q. Fair enough. Let me ask this question.</p> <p>21 When you were at Osco as a pharmacy</p> <p>22 manager from 1983 to 1993, did you have an</p>	<p>13</p> <p>1 Q. From the pharmacy's perspective at that</p> <p>2 time and pharmaceutical industry based on your</p> <p>3 experience at that time, were the drug acquisition</p> <p>4 costs at which the pharmacies acquired the drugs</p> <p>5 from wholesalers typically expressed in terms of</p> <p>6 discounts off of AWP or of amounts based upon WAC?</p> <p>7 A. I was familiar with both references. The</p> <p>8 pricing that I actually saw in the pharmacy wasn't</p> <p>9 represented as a discount or anything. There were</p> <p>10 just two different pricing codes on the bottles, so</p> <p>11 one was what we paid for it and one was an AWP</p> <p>12 price.</p> <p>13 Q. At that time, in the 1993 time frame let's</p> <p>14 say, is it correct there that the pharmacies were</p> <p>15 able to purchase most brand name drugs at an amount</p> <p>16 at or around WAC?</p> <p>17 A. Yes.</p> <p>18 Q. Was it your understanding at that time</p> <p>19 therefore that wholesalers tended to earn a very</p> <p>20 thin margin on the drugs sold to pharmacies?</p> <p>21 A. I'm certain that they earned a margin. I</p> <p>22 don't know that I would be able to define thin.</p>

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<p>14</p> <p>1 Q. Just based on your general understanding</p> <p>2 from the perspective of a pharmacist at that time,</p> <p>3 was it your understanding that wholesalers basically</p> <p>4 earned their margin on the prompt pay discount they</p> <p>5 received from manufacturers?</p> <p>6 A. They received that, and then there was</p> <p>7 also what appeared to be a markup between what they</p> <p>8 actually purchased the drug for and what they were</p> <p>9 reselling it to me at a wholesale cost or a</p> <p>10 discounted wholesale cost.</p> <p>11 Q. And what would you -- what was your</p> <p>12 perspective of the range of that markup at that</p> <p>13 time?</p> <p>14 A. I believed it to be in the range of 2 to</p> <p>15 3 percent, but I have no specific documentation on</p> <p>16 that.</p> <p>17 Q. Okay. So then when you started at</p> <p>18 John Deere, you initially were the pharmacy care</p> <p>19 representative, and then you were involved with a</p> <p>20 special project that involved developing a preferred</p> <p>21 drug list for Tennessee; is that correct?</p> <p>22 A. TennCare. It's the Medicaid program in</p>	<p>16</p> <p>1 could obtain at a lower cost.</p> <p>2 We also looked at dosing frequency and</p> <p>3 compliance and other aspects of it.</p> <p>4 Q. At that time was John Deere receiving</p> <p>5 rebates on drugs from manufacturers?</p> <p>6 A. Yes.</p> <p>7 Q. In assessing which of the drugs was the</p> <p>8 lowest cost drug and therefore would otherwise</p> <p>9 obtain a preferred formulary listing over a</p> <p>10 functionally equivalent drug, did John Deere</p> <p>11 incorporate into that consideration the amount of</p> <p>12 rebates it would get from manufacturers?</p> <p>13 A. Yes.</p> <p>14 Q. So from John Deere's perspective, this</p> <p>15 preferred drug list and subsequent formulary list</p> <p>16 were a means to control costs?</p> <p>17 Let me withdraw that question because</p> <p>18 that's not a fair question.</p> <p>19 One of the purposes of the preferred drug</p> <p>20 list and the later formularies were to control</p> <p>21 costs; is that correct?</p> <p>22 A. Yes.</p>
<p>15</p> <p>1 Tennessee.</p> <p>2 Q. What did that project involve? When you</p> <p>3 say developing a preferred drug list, what does that</p> <p>4 mean?</p> <p>5 A. Working with our clinical pharmacists and</p> <p>6 identifying which items we would like to promote or</p> <p>7 prefer, what you would probably call now a formulary</p> <p>8 listing. At that point we referred to it as a</p> <p>9 preferred drug list, and it was probably more</p> <p>10 expansive than what you see in formularies today.</p> <p>11 Q. When faced with a situation where you had</p> <p>12 functionally equivalent drugs, how did John Deere</p> <p>13 determine which drug to put on the preferred drug</p> <p>14 list at that time?</p> <p>15 A. There are several steps in the process.</p> <p>16 I'm familiar with most of those. We looked at the</p> <p>17 clinical aspects of the drug, if it created the same</p> <p>18 outcomes. We looked at side effects, interactions,</p> <p>19 many components of the clinical side of it. If we</p> <p>20 believed from a clinical standpoint that the two</p> <p>21 were interchangeable, then we looked at the cost</p> <p>22 components of the drug and looked at which one we</p>	<p>17</p> <p>1 Q. Has John Deere ever delegated that</p> <p>2 formulary determination function to any third party?</p> <p>3 A. Not to my knowledge. We basically act as</p> <p>4 our own PBM, or pharmacy benefit manager.</p> <p>5 Q. Has John Deere to your knowledge ever</p> <p>6 received proposals from any PBM that they take over</p> <p>7 the formulary management function?</p> <p>8 A. Yes.</p> <p>9 I guess let me back up to that other</p> <p>10 question. There was a period of time where we did</p> <p>11 work with an outside PBM, Diversified Pharmacy</p> <p>12 Services, for part of our population in Tennessee.</p> <p>13 Q. What period of time was that?</p> <p>14 A. I believe it was '93 to '95 or somewhere</p> <p>15 in there for the TennCare population.</p> <p>16 Q. During that time frame, did the</p> <p>17 Diversified Pharmacy Services PBM handle the rebate</p> <p>18 function for John Deere?</p> <p>19 A. I believe so. I don't have the exact</p> <p>20 materials on that.</p> <p>21 Q. So from John Deere's perspective, it had</p> <p>22 the option to either manage the formulary process</p>

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<p style="text-align: right;">18</p> <p>1 and the rebating process internally or alternatively</p> <p>2 delegate that function to a PBM, right?</p> <p>3 A. Yes.</p> <p>4 Q. Why is it that John Deere elected to do</p> <p>5 that internally?</p> <p>6 A. My perspective on that is that we felt we</p> <p>7 were in a good position to evaluate the clinical</p> <p>8 quality of the drugs and make those decisions</p> <p>9 ourselves. We felt that we could avoid middlemen in</p> <p>10 that process and better manage the activities going</p> <p>11 on.</p> <p>12 Q. So from just the economic viewpoint, was</p> <p>13 it John Deere's perspective that it was more</p> <p>14 efficient for them to manage the rebating process</p> <p>15 internally?</p> <p>16 A. Yes.</p> <p>17 Q. Has John Deere done any studies to</p> <p>18 determine whether or not it could obtain greater</p> <p>19 rebates by outsourcing the manufacturer rebating</p> <p>20 function to a PBM?</p> <p>21 A. We have evaluated that on several</p> <p>22 situations.</p>	<p style="text-align: right;">20</p> <p>1 favored nation clause, Diversified was able to get</p> <p>2 more favorable reimbursement for pharmacies than</p> <p>3 what we were able to get.</p> <p>4 Q. From John Deere's perspective, what are</p> <p>5 the functions that a PBM could provide that</p> <p>6 John Deere currently does provide?</p> <p>7 A. I don't know that I can give you an</p> <p>8 all-inclusive list, but I would start with the</p> <p>9 network pieces, providing service to the pharmacies,</p> <p>10 customer service questions, reviewing</p> <p>11 authorizations, drug utilization, medical necessity</p> <p>12 review, monitoring for inappropriate use, rebate</p> <p>13 contracting, promoting formulary items and</p> <p>14 appropriate use of drugs to the physicians.</p> <p>15 I'm sure there are many more. Claims</p> <p>16 processing we currently outsource, but that's</p> <p>17 certainly a function of the PBMs.</p> <p>18 Q. Is there an element of risk acceptance</p> <p>19 that PBMs provide or have offered to provide to</p> <p>20 John Deere?</p> <p>21 A. Is there a what?</p> <p>22 Q. Do you understand?</p>
<p style="text-align: right;">19</p> <p>1 Q. How did you evaluate that?</p> <p>2 A. By looking at proposals from other PBMs as</p> <p>3 far as what they would offer us. Some of them would</p> <p>4 offer guaranteed rebates per prescription or</p> <p>5 different sharing arrangements on the rebates, as</p> <p>6 well as looking at the net cost of the drugs and</p> <p>7 then looking at our staffing and our time and our</p> <p>8 involvement in putting those lists together.</p> <p>9 Q. And was the ultimate conclusion you</p> <p>10 reached that the John Deere rebates were competitive</p> <p>11 with the rebates that could be obtained from the</p> <p>12 PBMs?</p> <p>13 A. I believe that we found that our rebates</p> <p>14 were substantially higher than what we could obtain</p> <p>15 from using a PBM.</p> <p>16 Q. When John Deere utilized Diversified</p> <p>17 Pharmacy Services, did it also avail itself of any</p> <p>18 of the networks that Diversified Pharmacy Services</p> <p>19 had created with pharmacies?</p> <p>20 A. That was actually our purpose for using</p> <p>21 them. Because of language in some of the Tennessee</p> <p>22 pharmacy contracts that we referred to as our most</p>	<p style="text-align: right;">21</p> <p>1 A. No.</p> <p>2 Q. Let me ask the question differently.</p> <p>3 Have any of the PBM proposals that you</p> <p>4 received offered to accept some of the insurance</p> <p>5 risk with respect to reimbursing pharmacies that</p> <p>6 John Deere currently has?</p> <p>7 A. I wouldn't refer to it as insurance risk</p> <p>8 for reimbursing pharmacies. To me that means for</p> <p>9 the actual prescriptions and getting into what we do</p> <p>10 as an insurer.</p> <p>11 Certainly some of the PBM contracts would</p> <p>12 give us a flat rate of reimbursement for all of the</p> <p>13 drugs that for some pharmacies they may pay that</p> <p>14 pharmacy more or less than that amount, and there</p> <p>15 may be some risk within that.</p> <p>16 Q. So based upon what I heard you say, is it</p> <p>17 correct -- withdraw that.</p> <p>18 A. I don't know if I mentioned formulary in</p> <p>19 my list.</p> <p>20 Q. What I'm trying to do is try to summarize</p> <p>21 your testimony and see if we're on the same page.</p> <p>22 Would it be fair to say that from</p>

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<p style="text-align: right;">22</p> <p>1 John Deere's perspective the functions that a PBM 2 could provide that John Deere currently does provide 3 are, one, a claims processing function; two, a cost 4 control function, and that would include prior 5 authorizations, generic substitution, formulary 6 management; third, a network function; and fourth, a 7 reimbursement management function in that John Deere 8 would pay a fixed amount for reimbursement rather 9 than a variable amount depending upon the rates that 10 the particular pharmacies incurred? 11 A. We don't provide that today. 12 Q. But it would be fair to say that all else 13 being equal, each of those are functions that a PBM 14 could provide for John Deere? 15 A. Yes. Customer service would be another 16 one, the formulary management piece, the rebate 17 contracting piece, all of those. Claims processing 18 we do not do internally. That's that services 19 bureau that Mike talked about. We outsource the 20 actual processing of the claims to a different 21 entity. We do all the setup in the system as far as 22 building the benefit and entering the</p>	<p style="text-align: right;">24</p> <p>1 MR. HAAS: I'm digging through the 2 documents now for a document that's Bates stamped 3 JDH 1602 through 1616. It's the RESTAT agreement 4 dated 1997, September 29th, 1997, between John Deere 5 Health Care, Inc., and RESTAT. 6 MS. MacMENAMIN: I've got it. 7 MR. HAAS: Okay. For the record, we will 8 mark as John Deere Deposition Exhibit Number 2 the 9 document I just referred to. 10 (Exhibit Sidwell 002 marked as 11 requested.) 12 BY MR. HAAS: 13 Q. Ms. Sidwell, I ask that you take a look at 14 the document that's been marked as John Deere 15 Deposition Exhibit Number 2 and tell me whether 16 that's the RESTAT agreement we were talking about. 17 A. It appears to be so. 18 Q. If you would turn with me to the page 19 Bates stamped JDH 1612, 1611 is the first page of 20 the two-page Schedule A, schedule of RESTAT services 21 and prices. 22 Do you see that?</p>
<p style="text-align: right;">23</p> <p>1 authorizations, entering the reimbursement. 2 Q. Okay. And how long has it been that 3 you've been using ProCare? 4 A. 1999. 5 Q. Prior to ProCare? 6 A. We used Argus. 7 Q. And you used Argus solely as a claims 8 administrator? 9 A. Yes. 10 Q. I saw in the production a document that 11 was a RESTAT, an agreement with the company I 12 believe referred to as RESTAT, R-E-S-T-A-T. 13 A. I'd forgotten about that one. 14 Q. What is that? 15 A. RESTAT is another agent like a PBM, and we 16 will use them for part of our business. I believe 17 it was in Kentucky when we were working with an 18 indemnity product in Kentucky. 19 That particular entity did all of the PBM 20 functions, including the rebate contracting and 21 networking and other pieces of that customer service 22 center.</p>	<p style="text-align: right;">25</p> <p>1 A. Yes. 2 Q. And if you would turn with me to Page 2, 3 what is your understanding of what this page shows? 4 A. Do you want me to start at the top? 5 Q. No, just in general terms if you can 6 describe it for the record. 7 A. This would be some of the various services 8 that RESTAT would have performed for us and the 9 associated charges for reimbursement levels 10 associated with it. 11 Q. Now, near the bottom, it refers to the 12 pharmacy reimbursement for brand and generic, and it 13 sets forth a formula which is the lesser of U&C or 14 AWP minus 13 plus a \$2.50 dispensing fee for brand 15 drugs and the lesser of U&C AWP minus 20 percent or 16 MAC plus a \$2.50 dispensing fee for generic drugs. 17 Do you see that? 18 A. Yes. 19 Q. Do you have any understanding of how those 20 rates were determined at the time? In other words, 21 how was it for brand name drugs that John Deere came 22 up with a reimbursement rate for RESTAT of AWP minus</p>

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<p style="text-align: right;">26</p> <p>1 13 percent?</p> <p>2 A. In 1997, that was generally our</p> <p>3 reimbursement rate for our pharmacies with some</p> <p>4 exceptions to that. I assume that this was a</p> <p>5 proposal from RESTAT as far as what they felt they</p> <p>6 could provide to us that would give us an adequate</p> <p>7 network. Certainly it's in line of what our other</p> <p>8 reimbursement was.</p> <p>9 Q. And the use of the variable U&C in that</p> <p>10 formula for brand and generic reimbursement, does</p> <p>11 that refer to in your understanding the usual and</p> <p>12 customary cost of the pharmacy?</p> <p>13 A. I wouldn't say usual and customary cost.</p> <p>14 I would say usual and customary charge.</p> <p>15 Q. Okay. How would you define the usual and</p> <p>16 customary charge as used in this agreement?</p> <p>17 A. I don't know if there is a specific</p> <p>18 definition in this agreement without looking through</p> <p>19 it. How I would define usual and customary would be</p> <p>20 the price that that pharmacy would charge a</p> <p>21 cash-paying customer for that drug.</p> <p>22 Q. And from your perspective, the amount a</p>	<p style="text-align: right;">28</p> <p>1 cost.</p> <p>2 We wanted to never pay more than what they</p> <p>3 would charge a cash-paying customer.</p> <p>4 Q. Is it fair to say that John Deere included</p> <p>5 that usual and customary charge limitation in all</p> <p>6 its pharmacy contracts?</p> <p>7 A. To the best of my knowledge, yes. That</p> <p>8 was certainly our intent.</p> <p>9 Q. Sitting here today, how would I determine</p> <p>10 or how would anyone determine whether or not a</p> <p>11 particular transaction was reimbursed at the usual</p> <p>12 and customary charge amount or an AWP-based amount?</p> <p>13 A. Within the processing system, it would</p> <p>14 look at -- there's various fields in there.</p> <p>15 Depending upon what the pharmacy requested for</p> <p>16 reimbursement, there's a submitted price.</p> <p>17 There's -- typically the pharmacy has the ability to</p> <p>18 submit a usual and customary price, and then there's</p> <p>19 also our calculated price based upon the</p> <p>20 reimbursement that we built in the system.</p> <p>21 So as a claim process, you can determine</p> <p>22 to see which one of those amounts was paid.</p>
<p style="text-align: right;">27</p> <p>1 pharmacy would charge a cash-paying customer would</p> <p>2 include an element of margin above the pharmacy's</p> <p>3 acquisition cost of the drug, correct?</p> <p>4 A. Yes.</p> <p>5 Q. Now, from John Deere's perspective, did</p> <p>6 the U&C variable in these formulas and in the</p> <p>7 pharmacy contract formulas constitute a real</p> <p>8 limitation on the amount of drug reimbursement that</p> <p>9 was afforded?</p> <p>10 A. I'm not sure what you mean by real</p> <p>11 limitation.</p> <p>12 Q. Let me ask it differently then.</p> <p>13 A. Okay.</p> <p>14 Q. Why did John Deere include in its</p> <p>15 reimbursement contracts the term U&C as a limit on</p> <p>16 drug reimbursement?</p> <p>17 A. Sometimes the charge for a cash-paying</p> <p>18 customer would be less than AWP minus 13 or the</p> <p>19 other rates identified here. Frequently a pharmacy</p> <p>20 when pricing items would have a narrower margin on</p> <p>21 some items than others, or they may have loss</p> <p>22 leaders where they would actually sell things below</p>	<p style="text-align: right;">29</p> <p>1 Q. So is it fair to say in order to determine</p> <p>2 for any particular transaction what the basis was</p> <p>3 for the amount reimbursed to the pharmacy, one would</p> <p>4 have to look at the claims data?</p> <p>5 A. Claims data or aggregate of the claims</p> <p>6 data. There were some reporting available that</p> <p>7 would show us a percentage of claims that were paid</p> <p>8 at U&C versus paid at submitted versus paid at our</p> <p>9 contracted rate.</p> <p>10 Q. And does John Deere maintain that</p> <p>11 documentation going back to 1991?</p> <p>12 A. I'm sure that there were probably various</p> <p>13 reports of that throughout the time. I don't -- I</p> <p>14 wouldn't say that I would have consistent access to</p> <p>15 that.</p> <p>16 Q. Let me ask it differently.</p> <p>17 Is the report you're referring to, is that</p> <p>18 something that is generated in the regular course of</p> <p>19 business on a routine basis?</p> <p>20 A. It's something that would be reviewed more</p> <p>21 on an ad hoc basis from time to time. There were</p> <p>22 some standard reports that we had included that in</p>

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<p style="text-align: right;">30</p> <p>1 more recently in the past several years.</p> <p>2 Q. From the time frame from 1991 through</p> <p>3 2002, September 2002, is it fair to say that there</p> <p>4 is no regular reporting in the aggregate of the</p> <p>5 percentage of claims that were paid at U&C versus an</p> <p>6 AWP-based amount?</p> <p>7 A. I would say I don't have those physical</p> <p>8 reports available, that the data is probably there</p> <p>9 and could be gathered and produce those, and that</p> <p>10 from time to time along that way there probably were</p> <p>11 reports produced to look at that.</p> <p>12 Q. And just to be clear, when you say the</p> <p>13 data is available, you're referring to the claims</p> <p>14 data?</p> <p>15 A. Uh-huh.</p> <p>16 Q. So in order to determine what amount of</p> <p>17 claims were paid U&C versus what amount were paid</p> <p>18 AWP, we would have to look at the claims data?</p> <p>19 A. Yes.</p> <p>20 Q. Now, speaking more broadly, is it fair to</p> <p>21 say that in providing reimbursement to pharmacies</p> <p>22 directly or through a PBM that John Deere utilized a</p>	<p style="text-align: right;">32</p> <p>1 to determine the acquisition price and therefore use</p> <p>2 it as a reimbursement basis, does that mean it's</p> <p>3 just logistically and administratively difficult to</p> <p>4 do that on a programmatic basis?</p> <p>5 A. That and it would be difficult for me to</p> <p>6 validate what that pharmacy actually paid for that</p> <p>7 drug on a given prescription at a given location.</p> <p>8 Q. Well, let me ask it this way.</p> <p>9 Has John Deere ever given any</p> <p>10 consideration to requiring pharmacies as a condition</p> <p>11 of reimbursement to disclose acquisition costs?</p> <p>12 A. I'm not aware of that language in any of</p> <p>13 our contracts. Prior to my time, there may have</p> <p>14 been some of that when it was presumably based on an</p> <p>15 acquisition cost.</p> <p>16 Q. Given the variability in acquisition costs</p> <p>17 and how that may vary acquisition by acquisition,</p> <p>18 from John Deere's perspective, does it make more</p> <p>19 sense administratively and logistically when using a</p> <p>20 claims processing system to use a benchmark?</p> <p>21 A. Certainly. We use a benchmark for most of</p> <p>22 our reimbursing.</p>
<p style="text-align: right;">31</p> <p>1 formula that included a number of variables,</p> <p>2 including some discount off of AWP throughout the</p> <p>3 1990s?</p> <p>4 A. Yes.</p> <p>5 Q. In doing so, what was your understanding</p> <p>6 of the term average wholesale price or AWP?</p> <p>7 A. Average wholesale price was in my mind a</p> <p>8 reference price, sort of like a sticker price on a</p> <p>9 car that we could use to at least consistently apply</p> <p>10 formulas for reimbursement. Previous to that we had</p> <p>11 tried to use acquisition costs, and acquisition cost</p> <p>12 was something that you couldn't easily define and</p> <p>13 wasn't consistent pharmacy to pharmacy, so this</p> <p>14 provided a reference pricing source for us.</p> <p>15 Q. In providing reimbursement to the</p> <p>16 pharmacies throughout the 1990s based on some</p> <p>17 discount off of AWP, was it John Deere's intent to</p> <p>18 or understanding that they were providing</p> <p>19 reimbursement at an amount that would provide some</p> <p>20 margin to pharmacies over their acquisition costs?</p> <p>21 A. Yes.</p> <p>22 Q. When you say that it was a difficult thing</p>	<p style="text-align: right;">33</p> <p>1 Q. Does using a benchmark also allow</p> <p>2 John Deere in the event that it wants to raise or</p> <p>3 lower the amount of reimbursement it provides to all</p> <p>4 pharmacies a logistically simple way of doing that</p> <p>5 simply by adjusting the benchmark?</p> <p>6 A. Yes, or adjusting our discount from the</p> <p>7 benchmark.</p> <p>8 Q. Now, throughout your time at John Deere</p> <p>9 when you were involved in the reimbursement of</p> <p>10 pharmacies, you understood that pharmacies received</p> <p>11 in some instances discounts or rebates from</p> <p>12 manufacturers; is that correct?</p> <p>13 A. I'm aware that they received discounts</p> <p>14 from manufacturers. Most of our rebate contracts,</p> <p>15 the manufacturer did not want to provide rebates to</p> <p>16 me and rebates to the pharmacy, so for drugs</p> <p>17 purchased for our members, we retained the rights</p> <p>18 for rebates to or for those products.</p> <p>19 Q. Are you referring to the staff model HMO</p> <p>20 purchases at that point or more generally for all</p> <p>21 drugs?</p> <p>22 A. More generally. They may have received</p>

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<p style="text-align: right;">34</p> <p>1 rebates. I'm not aware of the named rebate, per se, 2 for the pharmacy. Certainly they received 3 discounts, incentives. 4 Q. When you refer to AWP as a benchmark, was 5 it your understanding and was it your understanding 6 throughout the 1990s that the AWP for brand name 7 drugs was set at typically 20 to 25 percent over WAC 8 for those drugs? 9 A. Yes. For certain manufacturers, I believe 10 it was 16 and two-thirds percent. 11 Q. 16 and two-thirds percent is actually the 12 discount -- 13 A. Discount. 14 Q. -- off of the AWP versus the markup over 15 WAC? 16 A. Yes. 17 Q. Took me a while to understand that. 18 What is your understanding of the term 19 wholesale acquisition price or WAC? 20 A. WAC would more accurately reflect in my 21 opinion what a wholesaler was able to purchase the 22 drugs for. Again, I would say that it is somewhat</p>	<p style="text-align: right;">36</p> <p>1 generic drugs, it refers to the reimbursement amount 2 is the lesser of U&C AWP minus 20 percent or MAC. 3 What is your understanding of the term 4 MAC? 5 A. MAC would be a maximum allowable charge or 6 maximum allowable cost. It's an upper limit on what 7 RESTAT in this case would pay for a generic drug on 8 a per-unit basis. 9 Q. Again, speaking generally, has 10 John Deere's contracts with pharmacies for the 11 reimbursement of pharmacies for drugs dispensed to 12 John Deere's members included an amount of 13 reimbursement for generic drugs that is capped at 14 MAC? 15 A. Yes. 16 Q. Now, in using that term in John Deere's 17 contracts, are they referring to a MAC that 18 John Deere has created internally or a MAC list that 19 John Deere has created, or are the contracts 20 referring to a MAC some other entity created? 21 A. During my time at John Deere Health, it's 22 been a proprietary MAC list that John Deere Health</p>
<p style="text-align: right;">35</p> <p>1 of a reference price, that there are probably people 2 that pay more than WAC and certainly those that pay 3 less than WAC. 4 Q. Does John Deere use the term WAC or 5 wholesale acquisition price in any of its contracts? 6 A. Within our rebate contracts with the drug 7 manufacturers, yes, not within our provider 8 contracts. 9 Q. Do any of the contracts, rebate contracts 10 that John Deere has with manufacturers set the 11 contract price as a discount above or below AWP? 12 A. I believe we have some that still 13 reference AWP. I would need to look at the specific 14 documents for that. I know that we have some that 15 reference WAC. 16 Q. From John Deere's perspective, does it 17 make a difference whether AWP or WAC is used in the 18 contract since they are just mathematically related 19 terms? 20 A. No. 21 Q. Now going back to this agreement that we 22 marked as Deposition Exhibit Number 2, for the</p>	<p style="text-align: right;">37</p> <p>1 maintains, creates and adjusts. 2 Q. What are the factors or considerations 3 that go into coming up with the MAC amount for 4 generic drugs? 5 A. We use several sources of data. One of 6 them is a HCFA MAC price. We look to see if there 7 are -- if more than one generic is available, more 8 than one source of that generic I guess is available 9 so that it should be available to pharmacies. We 10 look to see if it's A rated or not. We looked at 11 competitive pricing. We look at a baseline price 12 that's also provided by First Data Bank that 13 provides AWP and look at all those various factors 14 to look at what we want to set for a MAC price. 15 Q. When you referred to the baseline price 16 that is provided by First Data Bank that references 17 AWP, is that a baseline that pertains to generic 18 drugs rather than brand name drugs? What are you 19 referring to? 20 A. There's a price within First Data Bank 21 that -- my understanding of it, and it may not be 22 technically the understanding, but it looks at all</p>

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<p style="text-align: right;">38</p> <p>1 of the items available, all of the drugs available</p> <p>2 within that given entity and what a -- I'll call it</p> <p>3 an average or what an average price would be looking</p> <p>4 at brands and generics available.</p> <p>5 Q. Is it your understanding that the MAC</p> <p>6 price that John Deere develops as a proprietary</p> <p>7 price will differ from the MAC price that other</p> <p>8 health plans use?</p> <p>9 A. Certainly.</p> <p>10 Q. And is it fair to say that AWP is not the</p> <p>11 basis for the MAC price that John Deere has</p> <p>12 developed?</p> <p>13 A. Absolutely. It is used as one of our</p> <p>14 benchmarks in looking at determining a MAC price,</p> <p>15 where we would like to achieve at least a certain</p> <p>16 percentage discount, but it certainly is not the</p> <p>17 biggest factor.</p> <p>18 Q. During the course of your tenure at</p> <p>19 John Deere, has John Deere done any studies or costs</p> <p>20 of provider or pharmacy costs of acquisition of</p> <p>21 drugs to your knowledge?</p> <p>22 A. I wouldn't say we have done any formal</p>	<p style="text-align: right;">40</p> <p>1 to demonstrate what their cost was.</p> <p>2 Q. To sort of reiterate the conclusion you</p> <p>3 just made, it's fair to say that in providing</p> <p>4 reimbursement to pharmacies and doctors, John Deere</p> <p>5 understood that it was providing an element of</p> <p>6 margin to the physicians and the pharmacies; is that</p> <p>7 correct?</p> <p>8 A. That is correct, yes.</p> <p>9 Q. Now, you also mentioned that you were</p> <p>10 involved in the development of John Deere's staff</p> <p>11 model HMO.</p> <p>12 A. Of the pharmacy pieces of that, yes.</p> <p>13 Q. Okay. And did that staff model HMO have a</p> <p>14 particular name?</p> <p>15 A. John Deere Family Health Plan.</p> <p>16 Q. Family. And is it correct that that HMO</p> <p>17 was in operation from 1993 to 1999, to the best of</p> <p>18 your recollection?</p> <p>19 A. Those dates sound close. I'm not sure</p> <p>20 when it actually ceased operation.</p> <p>21 Q. Describe for me once again what exactly</p> <p>22 your involvement was with the HMO.</p>
<p style="text-align: right;">39</p> <p>1 studies of that. Certainly information is available</p> <p>2 through journals and through other means to allow us</p> <p>3 to know that our reimbursement for pharmacies and</p> <p>4 for physicians does include a margin in there.</p> <p>5 On occasion, if a pharmacist would request</p> <p>6 that we change a MAC price or change a reimbursement</p> <p>7 for a drug, they do have the opportunity to submit</p> <p>8 their acquisition cost in there.</p> <p>9 Q. Okay. When you referred to the sources of</p> <p>10 information about drug costs, is there anything that</p> <p>11 particularly comes to mind that you've reviewed over</p> <p>12 the last decade?</p> <p>13 A. Some of it comes from the various</p> <p>14 manufacturers. Some of it is a claim review from a</p> <p>15 pharmacy where they didn't feel that the</p> <p>16 reimbursement was enough and were willing to provide</p> <p>17 information. Some of it is drug topics or some of</p> <p>18 your journals, conferences such as the Academy of</p> <p>19 Managed Care Pharmacy, some of the networking</p> <p>20 opportunities there.</p> <p>21 On occasion some pharmacies have or</p> <p>22 physicians have provided a copy of an invoice to us</p>	<p style="text-align: right;">41</p> <p>1 A. I was involved with -- we had one HMO, one</p> <p>2 staff model that was up and running at that point,</p> <p>3 another one that was under development, and we were</p> <p>4 looking at opening some additional sites.</p> <p>5 So I was responsible for getting the</p> <p>6 licensure for the facility, working with the</p> <p>7 architects and other people as far as the layout of</p> <p>8 the pharmacy, the actual design of the pharmacy,</p> <p>9 hiring a staff, setting up arrangements with the</p> <p>10 wholesalers and with the various buying groups, some</p> <p>11 involvement with the manufacturer contracts for own</p> <p>12 use purchasing at that point, and pharmacy systems,</p> <p>13 basically getting the pharmacy up and ready to run.</p> <p>14 Q. Were you involved at all in the</p> <p>15 negotiation or contracting for drugs that were going</p> <p>16 to be dispensed by the staff model pharmacies or</p> <p>17 administered by the staff model physicians?</p> <p>18 A. Some of the agreements were already in</p> <p>19 place when I came on board because we had pharmacies</p> <p>20 in operation, but we did extend those to other</p> <p>21 facilities.</p> <p>22 Q. Were those contracts with wholesalers or</p>

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<p style="text-align: right;">42</p> <p>1 were the contracts with manufacturers or both?</p> <p>2 A. Both, and buying groups through the</p> <p>3 wholesalers.</p> <p>4 Q. To your recollection, were those</p> <p>5 contracts -- withdraw that question.</p> <p>6 To your recollection, how were the price</p> <p>7 of goods, drugs, expressed in those contracts? Was</p> <p>8 it in terms of a benchmark, or was it an absolute</p> <p>9 amount, to your recollection?</p> <p>10 A. Which part of the contracts I guess? With</p> <p>11 the drug manufacturers?</p> <p>12 Q. Well, I was asking both, but if you want</p> <p>13 to break it down, that's fine.</p> <p>14 Let me ask a better question then.</p> <p>15 With respect to the contracts between the</p> <p>16 staff model HMO and manufacturers, how were the</p> <p>17 price terms for drugs expressed?</p> <p>18 A. In the arrangement between the pharmacy in</p> <p>19 the staff model HMO and John Deere Health, we</p> <p>20 reimbursed them as we would reimburse other</p> <p>21 pharmacies, to my recollection. The purchasing of</p> <p>22 the drugs by the pharmacy were separate contracts to</p>	<p style="text-align: right;">44</p> <p>1 there would be a straight exchange between the two.</p> <p>2 I believe that they were able to purchase it at a</p> <p>3 price less than, creating a bigger difference, so</p> <p>4 there was still a margin in there for the pharmacy.</p> <p>5 Q. Did the reimbursement agreements between</p> <p>6 the pharmacists then and John Deere that you just</p> <p>7 mentioned also have an adjusted reimbursement amount</p> <p>8 to reflect the lower acquisition costs?</p> <p>9 A. At that time I don't believe we had a</p> <p>10 contract with them because they were part of our</p> <p>11 organization, so I'm not aware of a contract between</p> <p>12 the pharmacies and John Deere Health Care or</p> <p>13 John Deere Health Plan. They were part of it.</p> <p>14 Q. They were part of the staff HMO. That's</p> <p>15 what I would expect. I thought you had testified</p> <p>16 that there was a contractual relationship between</p> <p>17 the pharmacies.</p> <p>18 A. There is now that they are a separate</p> <p>19 entity.</p> <p>20 Q. Okay.</p> <p>21 A. And in our reimbursement to them in our</p> <p>22 adjudication system, we have them set up as if they</p>
<p style="text-align: right;">43</p> <p>1 that, and we negotiated up-front discounts on the</p> <p>2 pricing of the drugs, discounts from the wholesale</p> <p>3 price or discounts from AWP, and for those items</p> <p>4 that were used in the facilities for own use</p> <p>5 agreements, we did not then as an HMO get rebates on</p> <p>6 them, so it was basically an up-front discount for</p> <p>7 the items.</p> <p>8 Q. Two questions. The first question, to</p> <p>9 your recollection, were those contracts expressed as</p> <p>10 a discount off of AWP or a discount off of WAC or</p> <p>11 some other basis, to your recollection?</p> <p>12 A. I don't know that I totally recall what</p> <p>13 they were based on. Some of them were a -- it ended</p> <p>14 up being a per-unit price. I'm not sure if it was a</p> <p>15 discount off AWP or a discount off WAC, but it was a</p> <p>16 discounted price for us.</p> <p>17 Q. And it's your understanding that that</p> <p>18 discounted price reflected the amount of rebate that</p> <p>19 John Deere would otherwise be able to obtain from</p> <p>20 manufacturers for drugs that were administered to</p> <p>21 its members?</p> <p>22 A. I wouldn't say that I would think that</p>	<p style="text-align: right;">45</p> <p>1 were another pharmacy, a regular pharmacy.</p> <p>2 Q. In that adjudication system, was the staff</p> <p>3 model pharmacy before 1999 reimbursed at cost in the</p> <p>4 system, or was it reimbursed -- were the claims</p> <p>5 tracked at some --</p> <p>6 A. The claims were tracked at a discounted</p> <p>7 AWP as they were for any other pharmacy.</p> <p>8 Q. And that discounted AWP amount, was it the</p> <p>9 same amount that John Deere would generally</p> <p>10 calculate with respect to independent pharmacies, or</p> <p>11 was it some discounted amount, further discounted</p> <p>12 amount?</p> <p>13 A. It would be comparable to what John Deere</p> <p>14 Health paid other independent and chain pharmacies</p> <p>15 within the same area for the same product.</p> <p>16 Q. After 1999 when the group became</p> <p>17 independent, did John Deere continue to purchase</p> <p>18 drugs for the group?</p> <p>19 A. The group purchased the drugs themselves</p> <p>20 directly, and then we have a contract with them as</p> <p>21 we would any other pharmacy for reimbursement.</p> <p>22 MR. HAAS: Got it. Off the record.</p>

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<p style="text-align: right;">46</p> <p>1 (Whereupon, a lunch recess was 2 taken.) 3 MR. HAAS: Back on the record. 4 BY MR. HAAS: 5 Q. Ms. Sidwell, do the terms of John Deere's 6 reimbursement to pharmacies vary on a 7 contract-by-contract basis depending upon the 8 competitive relationship between John Deere and the 9 various pharmacies? 10 A. That's one of the variables, yes. 11 Q. What are the other variables? 12 A. Competitive within the community, not 13 necessarily between the pharmacies and John Deere 14 Health but within a community, whether it's an urban 15 area or a rural area, and then in some states there 16 are what I'll refer to as the most favored nation 17 clause that impact our ability to be able to get 18 lower reimbursement rates. 19 So if the pharmacy were to accept lower 20 reimbursement from us, they would also need to 21 accept lower reimbursement from other payers such as 22 state agencies.</p>	<p style="text-align: right;">48</p> <p>1 network and a reimbursement rate of AWP less 2 13 percent for branded drugs in the open network. 3 And without further inquiry into the 4 document other than what I've just described, Susan, 5 are you okay with me going forward? 6 MS. MacMENAMIN: Yes, I'm okay with you 7 going forward. 8 As it is right now, do you guys have 9 access to a fax machine if it came to be something 10 in more detail that I would need to see the 11 document? 12 MR. HAAS: Yes, we probably could find 13 that. 14 MS. MacMENAMIN: Go on for the moment. 15 BY MR. HAAS: 16 Q. Ms. Sidwell, I'll ask that you take a look 17 at this document and first tell me if you're 18 familiar with it, and if so, tell me what it is. 19 A. Yes, I'm familiar with it. It's the 20 contracts that we updated language and sent out to 21 many of our providers starting this year. 22 Q. Now, with respect to the two rows of the</p>
<p style="text-align: right;">47</p> <p>1 Q. Is another factor that impacts the amount 2 of reimbursement provided to a particular pharmacy 3 the amount of volume that John Deere can direct to 4 that pharmacy in terms of a closed or open network? 5 A. Yes. By directing people to certain 6 networks, we're able to get better discounts. 7 Q. To that point, let me mark as Deposition 8 Exhibit Number 3 a document Bates stamped JDH 3434 9 through 3460. 10 It's a document entitled Network Provider 11 Agreement effective July 1st, 2004. 12 (Exhibit Sidwell 003 marked as 13 requested.) 14 MR. HAAS: For the record, I will be 15 asking about Exhibit A, which is the rate 16 attachment, and in the rate attachment, there's a 17 table that breaks the rates down between pharmacy 18 network standard, pharmacy network open and mail 19 order, and my questions are going to go to the rows 20 pharmacy network standard and pharmacy network open 21 where there is a reimbursement rate of AWP less 22 15 percent for branded drugs for the standard</p>	<p style="text-align: right;">49</p> <p>1 rate attachment table that I described, do you know 2 why there is a lower reimbursement amount provided 3 or afforded by this agreement to the pharmacy under 4 the standard network than there is under the open 5 network? 6 A. The open network is basically every 7 pharmacy that is willing to contract with us and 8 willing to accept those rates. Standard is another 9 option where we have perhaps fewer pharmacies that 10 are willing to accept that rate and participate, so 11 as fewer pharmacies participate, we would expect 12 them to be funneled more volume. In addition to 13 these two rates, there are other networks that are 14 more restrictive than this that would get into 15 deeper discounts from the pharmacy. 16 Q. And to the same point, I'm going to mark 17 two other contracts. And, Susan, tell me whether 18 you have these. 19 The first is a document with a Bates stamp 20 range JDH 3491 through 3522. It's a provider 21 agreement that purports to be effective as of 22 March 13th, 2004, between John Deere and looks like</p>

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<p style="text-align: right;">50</p> <p>1 Lowell Grizzle, G-r-i-z-z-l-e -- excuse me, on the</p> <p>2 previous page, Page 16, it clarifies the pharmacy as</p> <p>3 P&S Pharmacy.</p> <p>4 MS. MacMENAMIN: I do not have it. My</p> <p>5 Bates ranges end at JDH 2500, so whatever the</p> <p>6 reason, I don't know where the confusion was from</p> <p>7 the documents, but that's where my Bates ranges end</p> <p>8 is 2500.</p> <p>9 MR. HAAS: Okay. I'll do the same thing.</p> <p>10 I have the same type of question on this document,</p> <p>11 so I'll just describe just in very general terms the</p> <p>12 rate schedule for the record, and if you require</p> <p>13 further clarification, we will fax it to you.</p> <p>14 MS. MacMENAMIN: Okay.</p> <p>15 MR. HAAS: So we will mark that as</p> <p>16 Deposition Exhibit Number 4.</p> <p>17 And as Deposition Exhibit Number 5, we</p> <p>18 will mark another agreement Bates stamped JDH 3461</p> <p>19 through 3490, and this is an agreement effective</p> <p>20 April 1st, 2004, between John Deere and Walgreens.</p> <p>21 (Exhibit Sidwell 004 marked as</p> <p>22 requested.)</p>	<p style="text-align: right;">52</p> <p>1 you, Ms. Sidwell, having reviewed these documents if</p> <p>2 you're familiar with what they are.</p> <p>3 A. Yes.</p> <p>4 Q. Okay. What are they?</p> <p>5 A. The first one is a provider contract with</p> <p>6 a pharmacy that we have in Tennessee for products</p> <p>7 available in there. The other one is a pharmacy</p> <p>8 contract with Walgreens that contains more</p> <p>9 restrictive networks in Iowa but also our national</p> <p>10 rates with Walgreens.</p> <p>11 Q. And it is correct, is it not, that the</p> <p>12 reimbursement rate for branded drugs and generic</p> <p>13 drugs under the Walgreens contract is less than the</p> <p>14 reimbursement rates reflected in the P&S Pharmacy</p> <p>15 contract; is that correct?</p> <p>16 A. Yes.</p> <p>17 Q. For example, for brand name drugs under</p> <p>18 the Walgreens contract, the first row is titled</p> <p>19 Retail Pharmacy. It provides for a reimbursement of</p> <p>20 AWP less 20 percent or U&C, while in the</p> <p>21 P&S Pharmacy contract under the same row it provides</p> <p>22 for a reimbursement rate for branded drugs of AWP</p>
<p style="text-align: right;">51</p> <p>1 (Exhibit Sidwell 005 marked as</p> <p>2 requested.)</p> <p>3 MR. HAAS: And for the record, I'll</p> <p>4 describe the pages of the document that I will be</p> <p>5 referring to. The first is with respect to Exhibit</p> <p>6 Number 4, it's the page JDH 3509, which is</p> <p>7 Exhibit A, rate attachment, and this page has a</p> <p>8 table which has three columns, the service, the</p> <p>9 rate, and initial fee acceptance of service.</p> <p>10 My questions are directed at a comparison</p> <p>11 between the amounts reflected in the rate column</p> <p>12 under this contract with the rates reflected in a</p> <p>13 similar schedule in the contract marked Exhibit 5,</p> <p>14 and that is at JDH 3478.</p> <p>15 And for the record, the tables are very</p> <p>16 similar in format and differing with respect to the</p> <p>17 rate, the reimbursement rate reflected on the</p> <p>18 contracts, and also with respect to some of the</p> <p>19 language that goes to the networks covered by the</p> <p>20 reimbursement rates.</p> <p>21 BY MR. HAAS:</p> <p>22 Q. But let me step back for a moment and ask</p>	<p style="text-align: right;">53</p> <p>1 less 14.5 percent or the U&C; is that correct?</p> <p>2 A. Yes.</p> <p>3 Q. The question is, what is the explanation</p> <p>4 for the different rates reflected in these two</p> <p>5 contracts?</p> <p>6 A. Our competitive rates in Tennessee are</p> <p>7 much different than in the Iowa and Illinois area as</p> <p>8 is our distribution of membership, so we were able</p> <p>9 to because of our volume, because of our</p> <p>10 longstanding business relationship get a more</p> <p>11 favorable reimbursement from Walgreens than what we</p> <p>12 are from a pharmacy in Tennessee.</p> <p>13 Q. What does John Deere do, if anything, to</p> <p>14 monitor its prescription drug program costs?</p> <p>15 A. We monitor claims processed on a daily</p> <p>16 basis. We have weekly, monthly, quarterly reporting</p> <p>17 that looks at our claim volume, our cost per claim,</p> <p>18 brand generic utilization, formulary. We have</p> <p>19 various employer group reporting, various segments</p> <p>20 of our population looking at trends.</p> <p>21 It would be easier to say what we don't do</p> <p>22 to monitor it.</p>

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15 (Pages 54 to 57)

<p style="text-align: right;">54</p> <p>1 Q. All right. We will move on.</p> <p>2 I think I asked this question earlier, but</p> <p>3 I'm not sure if I asked it of you.</p> <p>4 What has John Deere done, if anything, to</p> <p>5 analyze the relative cost to John Deere of drug</p> <p>6 administration in hospitals versus in doctors'</p> <p>7 offices?</p> <p>8 A. We're certainly aware of our different</p> <p>9 levels of reimbursements for the various providers.</p> <p>10 That was one of the reasons that we looked at</p> <p>11 directing more volume through the pharmacy</p> <p>12 processing areas instead of through the physician</p> <p>13 offices. It's one of the reasons we looked at the</p> <p>14 specialty pharmacy program, looked at alternative</p> <p>15 arrangements to be able to provide these drugs to</p> <p>16 members at lower costs.</p> <p>17 Q. So all else being equal, the costs of</p> <p>18 administering drugs in the hospital setting is</p> <p>19 greater than in the in-office setting; is that</p> <p>20 correct?</p> <p>21 A. Certainly there are additional expenses</p> <p>22 associated with the hospital setting. We would like</p>	<p style="text-align: right;">56</p> <p>1 A. Uh-huh.</p> <p>2 Q. Right. Now, I've shown you a couple of</p> <p>3 the documents that have been produced in this case,</p> <p>4 but we haven't walked through each and every one of</p> <p>5 them.</p> <p>6 In order to authenticate the documents, I</p> <p>7 now want to ask you a few questions with respect to</p> <p>8 your knowledge about how they were collected in</p> <p>9 order to establish that they are documents that are</p> <p>10 maintained in the regular course of business.</p> <p>11 So to that end, are you familiar with how</p> <p>12 the documents that were produced in this litigation</p> <p>13 to defendants pursuant to their subpoena were</p> <p>14 collected?</p> <p>15 A. The majority of them, yes.</p> <p>16 MS. KNOLL: I want to clarify, Erik,</p> <p>17 before you go any farther that Carol was involved</p> <p>18 with gathering basically the provider contracts and</p> <p>19 the pharmacy contracts, not the stuff having to do</p> <p>20 with the McKesson project nor the stuff having to do</p> <p>21 with the arbitration. And there may be some other</p> <p>22 things that Tamara is more familiar with what was</p>
<p style="text-align: right;">55</p> <p>1 to get to the most appropriate setting. Whether you</p> <p>2 look at the drug costs being actually more expensive</p> <p>3 in the hospital, I think it's all the associated</p> <p>4 services that go along with that.</p> <p>5 Q. From a healthcare -- from a health plan</p> <p>6 perspective, would you say that your reimbursement</p> <p>7 costs typically are greater when a drug is</p> <p>8 administered in the hospital setting even in the</p> <p>9 outpatient setting as compared to when administered</p> <p>10 in-office?</p> <p>11 A. I would say that in an outpatient setting,</p> <p>12 that is correct. Within the hospital, typically the</p> <p>13 drug costs are rolled into the other services,</p> <p>14 either as a per diem charge or a DRG charge, so they</p> <p>15 aren't specifically identified in there.</p> <p>16 Certainly I'd like to provide it in the</p> <p>17 most appropriate setting, and it's less expensive</p> <p>18 for me as a whole in an outpatient.</p> <p>19 Q. Right. And that would be one of the</p> <p>20 things you would consider, where is the patient</p> <p>21 going to get the best treatment, would it be in the</p> <p>22 outpatient setting or in-office setting?</p>	<p style="text-align: right;">57</p> <p>1 actually produced than I am.</p> <p>2 MR. HAAS: To the extent that you want to</p> <p>3 supplement her testimony or clarify, that's fine.</p> <p>4 We will take your representations.</p> <p>5 MS. KNOLL: That will do.</p> <p>6 BY MR. HAAS:</p> <p>7 Q. And focusing then on the contracts that</p> <p>8 were produced, were you involved in the collection</p> <p>9 of the contracts that were produced to the</p> <p>10 defendants in this matter?</p> <p>11 A. Yes.</p> <p>12 Q. Are those documents, those contracts,</p> <p>13 maintained in John Deere's files in the regular</p> <p>14 course of business?</p> <p>15 A. Yes.</p> <p>16 Q. Are the documents maintained pursuant to a</p> <p>17 document retention policy?</p> <p>18 A. Yes, but the documents are maintained in</p> <p>19 different places. Some are at the home office, like</p> <p>20 pharmacy contracts. The other contracts are out in</p> <p>21 the operation site.</p> <p>22 Q. Are the documents maintained by a document</p>

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<p style="text-align: right;">58</p> <p>1 custodian whose obligation it is to maintain the</p> <p>2 documents in the regular course of business?</p> <p>3 A. I would defer to Mike and Laura on that.</p> <p>4 I'm not aware of a formal custodian.</p> <p>5 Q. Are all these documents documents that</p> <p>6 were produced and generated in the normal course of</p> <p>7 business at John Deere?</p> <p>8 A. The ones that I'm familiar with, yes.</p> <p>9 MR. HAAS: Susan, I am going to turn it</p> <p>10 over to you now to ask whatever questions you may</p> <p>11 have, reserving my right to follow up.</p> <p>12 MS. MacMENAMIN: Sure. Why don't we</p> <p>13 continue on with Ms. Sidwell since she has already</p> <p>14 been testifying, and then we will skip later to</p> <p>15 Mr. Beaderstadt.</p> <p>16 EXAMINATION</p> <p>17 BY MS. MacMENAMIN:</p> <p>18 Q. As I said earlier, my name is</p> <p>19 Susan MacMenamin, and I represent the plaintiffs in</p> <p>20 this action, and I'm going to ask you a few</p> <p>21 questions, jumping around to and from some of the</p> <p>22 questions that Mr. Haas has already asked of you.</p>	<p style="text-align: right;">60</p> <p>1 A. I believe it was in both of those, yes.</p> <p>2 It was certainly in the RESTAT one.</p> <p>3 Q. U&C, usual and customary, do you know, is</p> <p>4 there any link between usual and customary figures,</p> <p>5 is there any link to average wholesale prices or</p> <p>6 AWP, meaning is U&C ever a function of AWP?</p> <p>7 MS. KNOLL: If you know.</p> <p>8 THE WITNESS: U&C is really defined by the</p> <p>9 individual pharmacy or the pharmacy chain, so I</p> <p>10 don't know that I would be in the best position to</p> <p>11 define that.</p> <p>12 Certainly for generic items my answer</p> <p>13 would be no.</p> <p>14 BY MS. MacMENAMIN:</p> <p>15 Q. Okay. During your earlier testimony, you</p> <p>16 did say that there exists some claims data that</p> <p>17 would show us whether AWP or U&C was paid for brand</p> <p>18 name drugs?</p> <p>19 A. Correct.</p> <p>20 Q. And you said that we'd be able to tell</p> <p>21 from that claims data how often U&C versus AWP was</p> <p>22 paid.</p>
<p style="text-align: right;">59</p> <p>1 Now, you testified earlier that U&C or</p> <p>2 usual and customary is a term that appears in all of</p> <p>3 your pharmacy contracts.</p> <p>4 What about the term average wholesale</p> <p>5 price, is AWP a component of all your pharmacy</p> <p>6 contracts as well?</p> <p>7 A. It's certainly a part of our template</p> <p>8 language. I would expect it to be in there. It's</p> <p>9 referenced as a national pricing index and then</p> <p>10 needing to supply an NDC number that then</p> <p>11 corresponds to that AWP pricing.</p> <p>12 Q. So is it fair to say that AWP would appear</p> <p>13 in all of your contracts, your pharmacy contracts?</p> <p>14 A. To the best of my knowledge, it's in</p> <p>15 there. I'm trying to think of exceptions and not</p> <p>16 coming up with any right now.</p> <p>17 Q. And how about with respect to your PBM</p> <p>18 contracts that you've had over the years, was AWP a</p> <p>19 component of those PBM contracts?</p> <p>20 A. You're referring to the RESTAT and the DPS</p> <p>21 contracts?</p> <p>22 Q. Yes, exactly.</p>	<p style="text-align: right;">61</p> <p>1 Can you give us, just sitting here now in</p> <p>2 your experience, can you give us an estimate or a</p> <p>3 ballpark figure how often U&C is paid versus AWP is</p> <p>4 paid?</p> <p>5 MR. HAAS: Objection, form.</p> <p>6 You can answer.</p> <p>7 THE WITNESS: I don't know that I have an</p> <p>8 exact percentage, and the percentage does vary on</p> <p>9 the pharmacies. Even though we request the pharmacy</p> <p>10 to submit a U&C, they don't always do that, and many</p> <p>11 of them in going through our reviews appear to have</p> <p>12 set a predetermined discount instead of actually</p> <p>13 providing us with a U&C amount.</p> <p>14 Recall from probably six or more years ago</p> <p>15 was that it was in the range of 2 to 4 percent of</p> <p>16 the prescriptions were coming in at a U&C price. I</p> <p>17 believe it may be closer to 4 percent now, but my</p> <p>18 recollection is a little fuzzy on the exact number.</p> <p>19 BY MS. MacMENAMIN:</p> <p>20 Q. Okay. Was it ever greater than 4 percent</p> <p>21 in your experience?</p> <p>22 A. Certainly on generic items it is. On an</p>

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<p style="text-align: right;">62</p> <p>1 overall percentage, it may have been.</p> <p>2 Q. Okay. And talking now exclusively of</p> <p>3 brand name drugs here, was it ever 4 percent, just a</p> <p>4 ballpark estimate?</p> <p>5 A. I don't feel prepared to answer that</p> <p>6 without the facts and data. Certainly I would</p> <p>7 expect it to be in about that range.</p> <p>8 Q. Okay. You also testified as to your</p> <p>9 understanding of AWP or average wholesale price and</p> <p>10 that you believed it was something of a sticker</p> <p>11 price, like an MSRP on a car.</p> <p>12 A. Yes.</p> <p>13 Q. Exploring your understanding of AWP a</p> <p>14 little further, do you know who determines the AWP?</p> <p>15 A. My understanding is that it's set by the</p> <p>16 manufacturers, sometimes in conjunction with other</p> <p>17 entities, that there isn't really an AWP. For</p> <p>18 example, if I use First Data Bank, who I use in my</p> <p>19 pharmacy processing as my source for AWP, it is</p> <p>20 different than if I use Redbook as my source for</p> <p>21 AWP.</p> <p>22 I don't know the various components that</p>	<p style="text-align: right;">64</p> <p>1 my testimony on that and what I truly said I thought</p> <p>2 the wholesale acquisition cost was. It more closely</p> <p>3 resembles what a wholesaler may pay to a</p> <p>4 manufacturer. I'm not sure that it is an exact</p> <p>5 replication of that.</p> <p>6 BY MS. MacMENAMIN:</p> <p>7 Q. Okay. Extrapolating from that, would you</p> <p>8 say that average wholesale price more closely</p> <p>9 resembles an average of wholesale prices charged by</p> <p>10 wholesalers?</p> <p>11 A. Absolutely not. In my experience, when I</p> <p>12 purchased a drug from a wholesaler, my book would</p> <p>13 contain an average wholesale price and then would</p> <p>14 contain another list price or another reference</p> <p>15 there that would be what I actually reimbursed for</p> <p>16 the drug or what I was charged for the drug.</p> <p>17 Q. Okay. You stated earlier that in your</p> <p>18 pharmacy contract negotiations you formerly used</p> <p>19 acquisition cost?</p> <p>20 A. Before my time here, I believe that they</p> <p>21 had requested acquisition cost be submitted.</p> <p>22 Q. Okay. But then, and fill me in if I'm</p>
<p style="text-align: right;">63</p> <p>1 go into who sets the specific AWP level.</p> <p>2 Q. Okay. Now, can you explain a little</p> <p>3 further, just focusing on the terms AWP, average</p> <p>4 wholesale price, what do you understand it to be</p> <p>5 representative of?</p> <p>6 MR. HAAS: Objection to form.</p> <p>7 THE WITNESS: My understanding of AWP is</p> <p>8 that it's strictly a reference price. I don't know</p> <p>9 that I would say that it's representative of -- I</p> <p>10 don't have a good definition of that. It's my</p> <p>11 reference price that I use as a benchmark to price</p> <p>12 drugs from that.</p> <p>13 BY MS. MacMENAMIN:</p> <p>14 Q. Okay. Now, you testified that wholesale</p> <p>15 acquisition cost as you understand it is a price</p> <p>16 paid by wholesalers to manufacturers.</p> <p>17 Now, you understand AWP, average wholesale</p> <p>18 price, to be a price charged by wholesalers or an</p> <p>19 average of prices charged by wholesalers?</p> <p>20 MR. HAAS: Objection to form.</p> <p>21 THE WITNESS: I don't believe that my</p> <p>22 wholesale -- I guess I would like to refer back to</p>	<p style="text-align: right;">65</p> <p>1 misrepresenting your testimony, but you said you</p> <p>2 switched to AWP as a benchmark because you needed a</p> <p>3 consistent price?</p> <p>4 A. A consistent reference that we could build</p> <p>5 into our systems to be able to adjudicate the claims</p> <p>6 consistently, to be able to be predictable in our</p> <p>7 pricing, to be able to automatically know what we</p> <p>8 were going to pay without having to go back and</p> <p>9 audit what each particular pharmacy purchased a</p> <p>10 given drug for.</p> <p>11 Q. So is it fair to say that you used AWP to</p> <p>12 replace actual acquisition cost as a reference price</p> <p>13 in your negotiation process?</p> <p>14 MR. HAAS: Objection to form.</p> <p>15 THE WITNESS: We used it as a benchmark to</p> <p>16 discount our reimbursement from. The actual</p> <p>17 acquisition cost, and this is predating my</p> <p>18 involvement at John Deere Health, that was used as a</p> <p>19 reimbursement, but it wasn't -- the actual</p> <p>20 acquisition cost wasn't supposed to be a reference</p> <p>21 price. It was supposed to be your actual</p> <p>22 acquisition cost.</p>

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<p style="text-align: right;">66</p> <p>1 BY MS. MacMENAMIN:</p> <p>2 Q. Okay. You also testified as to your</p> <p>3 belief that the pharmacies had a reasonable margin</p> <p>4 built into the reimbursement that they received from</p> <p>5 you?</p> <p>6 MR. HAAS: Objection to form.</p> <p>7 THE WITNESS: Yes.</p> <p>8 BY MS. MacMENAMIN:</p> <p>9 Q. Can you give us a ballpark guess as to</p> <p>10 what that reasonable margin might have been?</p> <p>11 MR. HAAS: Objection to form.</p> <p>12 THE WITNESS: I don't know that I know</p> <p>13 their specific margin. I do know that even at AWP</p> <p>14 minus 20 that they were still able to cover their</p> <p>15 operating expenses without losing money, so whatever</p> <p>16 their operating costs would be, their margin was</p> <p>17 still there to cover that along with the dispensing</p> <p>18 fee component that we pay.</p> <p>19 BY MS. MacMENAMIN:</p> <p>20 Q. Okay.</p> <p>21 A. If you look at a pharmacy, in the data</p> <p>22 that I've seen, it looks like the average cost to</p>	<p style="text-align: right;">68</p> <p>1 Q. Are you aware of any other benchmarks that</p> <p>2 are available for use in reimbursing pharmacies?</p> <p>3 A. Certainly like the HCFA MAC would be a</p> <p>4 benchmark price. That's one that I don't -- we</p> <p>5 don't use in our business to implement it. We use</p> <p>6 it as one of the things in compiling our own MAC</p> <p>7 pricing.</p> <p>8 Q. Is the HCFA MAC exclusive to generic</p> <p>9 products?</p> <p>10 A. I believe so. It doesn't include all</p> <p>11 generics.</p> <p>12 Q. So just speaking of brand name drugs here</p> <p>13 exclusively, are you aware of any other benchmarks</p> <p>14 available for use in reimbursing pharmacies?</p> <p>15 I'm sorry, I didn't hear your answer if</p> <p>16 you did answer.</p> <p>17 A. I'm still thinking. I'm not aware of any</p> <p>18 easily definable other benchmark out there.</p> <p>19 Certainly there are different sources of AWP than</p> <p>20 what we use today.</p> <p>21 Q. So if you learned that AWP did not have a</p> <p>22 relation to any sort of real world prices, would</p>
<p style="text-align: right;">67</p> <p>1 dispense a prescription used to be 6 something. I</p> <p>2 think it's 7 or 8 something per prescription now.</p> <p>3 And if I'm paying them as in some of these contracts</p> <p>4 \$1.75 or \$1.49 per prescription, there has to be</p> <p>5 additional margin in the drug cost for them to be</p> <p>6 able to continue to be in business.</p> <p>7 Q. Okay. From what you're saying, I</p> <p>8 understand that you find AWP to be a useful</p> <p>9 benchmark in place of actual acquisition cost?</p> <p>10 MR. HAAS: Objection to form.</p> <p>11 THE WITNESS: Yes. It's an industry</p> <p>12 standard.</p> <p>13 BY MS. MacMENAMIN:</p> <p>14 Q. And would you say that it's a useful</p> <p>15 benchmark because it has a relation to some kind of</p> <p>16 real world price?</p> <p>17 MR. HAAS: Objection to form.</p> <p>18 THE WITNESS: I would say that it's useful</p> <p>19 because it is a benchmark, because it is an industry</p> <p>20 norm that then I can apply discounts to to get</p> <p>21 consistent adjudication of claims.</p> <p>22 BY MS. MacMENAMIN:</p>	<p style="text-align: right;">69</p> <p>1 that affect your negotiations with pharmacies in</p> <p>2 using AWP as a benchmark?</p> <p>3 MR. HAAS: Objection to form.</p> <p>4 THE WITNESS: I guess I already understand</p> <p>5 that AWP is not necessarily a direct linear</p> <p>6 relationship to the cost or the price that that</p> <p>7 pharmacy pays for the drug, so since I know that</p> <p>8 today, I'm not sure that it would change the way I'm</p> <p>9 doing business or the way I'm contracting with my</p> <p>10 pharmacies.</p> <p>11 BY MS. MacMENAMIN:</p> <p>12 Q. In your negotiations with manufacturers</p> <p>13 for rebates and discounts, are those negotiations</p> <p>14 also based on the benchmarks AWP and WAC?</p> <p>15 A. Those are certainly two of the things that</p> <p>16 are used to calculate the various levels of rebates.</p> <p>17 Q. Can you tell me of any other benchmarks</p> <p>18 that are available?</p> <p>19 A. I look at the other costs of drugs in that</p> <p>20 class based on AWP, based on WAC, and based on the</p> <p>21 rebate amounts that the other manufacturers are</p> <p>22 willing to offer to get down to a net price.</p>

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19 (Pages 70 to 73)

<p style="text-align: right;">70</p> <p>1 So regardless of -- to me it's a</p> <p>2 mathematical calculation of what is the lowest net</p> <p>3 cost. Whether it's a lower AWP and then a lower</p> <p>4 rebate or whether it's a higher AWP and a bigger</p> <p>5 rebate, we're worried about the net cost line.</p> <p>6 Q. Okay. You just said earlier that most of</p> <p>7 your negotiations with manufacturers are based on</p> <p>8 WAC and that some of them are based on AWP, and in</p> <p>9 conjunction with your testimony that WAC is somewhat</p> <p>10 representative of the price wholesalers pay to</p> <p>11 manufacturers, my question is, if you found out and</p> <p>12 if you learned that wholesalers paid significantly</p> <p>13 less than WAC, would that affect your negotiations</p> <p>14 for rebates with manufacturers?</p> <p>15 A. Again, I believe that wholesale</p> <p>16 acquisition cost is a reference point. I'm not sure</p> <p>17 it's exactly what wholesalers purchase their drugs</p> <p>18 for. I'm sure there are other margins in there.</p> <p>19 But no, it's not going to impact the way</p> <p>20 that I negotiate with manufacturers.</p> <p>21 Q. My question was that it being a reference</p> <p>22 point, if you found out that WAC was significantly</p>	<p style="text-align: right;">72</p> <p>1 rebate amount will be off of AWP or WAC when WAC and</p> <p>2 AWP are terms that change, prices that change?</p> <p>3 A. In our agreements, we typically state the</p> <p>4 AWP or the WAC or whatever reference price we're</p> <p>5 using that was in effect on a certain date in the</p> <p>6 contract. Whether it's the beginning of the quarter</p> <p>7 or the end of the quarter or whatever, we tie that</p> <p>8 specifically down in the contract so that we know</p> <p>9 what we can expect to receive.</p> <p>10 Q. I want to go now to your understanding of</p> <p>11 MAC or more specifically the John Deere MAC.</p> <p>12 Is it fair to say that based on your</p> <p>13 testimony that John Deere's MAC is based at least in</p> <p>14 some part on AWP?</p> <p>15 A. AWP is one of the reference points that we</p> <p>16 use to see what type of discounting we're getting as</p> <p>17 compared to what we would pay for the brand name</p> <p>18 item, and since the brand name is reimbursed at a</p> <p>19 discounted AWP, it's drawn into that equation, but</p> <p>20 the basic calculation is what am I paying for the</p> <p>21 brand name, what am I able to pay for the generic.</p> <p>22 Q. Okay. At a certain point you said that or</p>
<p style="text-align: right;">71</p> <p>1 lower and, in fact, did not have a relation to the</p> <p>2 price that wholesalers paid manufacturers for drugs,</p> <p>3 would that affect your negotiations for rebates</p> <p>4 using the term WAC?</p> <p>5 MR. HAAS: Objection to form, asked and</p> <p>6 answered, and speculation.</p> <p>7 THE WITNESS: No, because in my mind it's</p> <p>8 all about net cost. So whether you base it on --</p> <p>9 even if your WAC price was 2,000 percent of what the</p> <p>10 wholesaler paid, I'm still looking at a discount off</p> <p>11 something or something to arrive at a price per unit</p> <p>12 that -- a rebate per unit that the manufacturer is</p> <p>13 going to give me.</p> <p>14 So even if it's a discount off AWP or a</p> <p>15 discount off WAC or a discount off whatever, what it</p> <p>16 ends up being to me is what is my rebate per tablet</p> <p>17 or per milligram or per whatever on a drug.</p> <p>18 BY MS. MacMENAMIN:</p> <p>19 Q. Is it your understanding that AWP's and</p> <p>20 WAC's are flexible prices that change?</p> <p>21 A. Yes.</p> <p>22 Q. So are you able to determine what your</p>	<p style="text-align: right;">73</p> <p>1 Mr. Haas asked you if you had performed any studies</p> <p>2 on pharmacy acquisition costs, and you referred to</p> <p>3 some source as a publication, and I just didn't</p> <p>4 understand your answer actually.</p> <p>5 Could you explain more about that, studies</p> <p>6 that you performed on pharmacy acquisition costs?</p> <p>7 A. I'm not aware that we did any formal</p> <p>8 studies on acquisition cost. In the process of</p> <p>9 doing a claim review, frequently a pharmacy will</p> <p>10 tell us what their acquisition cost is on a certain</p> <p>11 item, especially if they feel their reimbursement</p> <p>12 isn't high enough.</p> <p>13 In many of the publications, it will refer</p> <p>14 to discounted AWP pricing, such as Drug Topics and</p> <p>15 some of the -- that's just one example of a</p> <p>16 publication that's out there.</p> <p>17 As I've gone to various meetings in</p> <p>18 different forums, certainly there are people there</p> <p>19 that give presentations on discounted pricing and</p> <p>20 operations of a pharmacy or operations of a PBM and</p> <p>21 some of the associated margins and things in there.</p> <p>22 Q. I want to ask a few more questions now</p>